

TITLE 8. DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Division of Occupational Safety and Health is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a public hearing to be held at 2211 Park Towne Circle, Suite 1, Sacramento, California at 10:00 a.m., on October 21, 2002. These facilities are accessible to persons with mobility impairments.

WRITTEN COMMENT PERIOD

Written comments must be received by the Division at 2211 Park Towne Circle, Suite 1, Sacramento, CA 95825 not later **than 5:00 p.m. on October 21, 2002**, or must be received by the Division at the hearing. Written comments should be mailed to the above address, faxed to 916/483-0572 or e-mailed to DOSHINFO@hq.dir.ca.gov. The official record of the rulemaking proceeding will be closed at 5:00 p.m. on October 21, 2002. Written comments received after that date and time will not be considered unless an extension of time in which to receive specific written comments is announced at the public hearing.

The Division may thereafter adopt the proposed regulations substantially as described below or may modify them if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority: Sections 60.5, 6308, and 9021.9, Labor Code.

Reference: Section 6501(c) and 9021.9, Labor Code; and Section 1529, Title 8, California Code of Regulations.

Informative Digest/Policy Statement Overview.

Article 2.7 Approval of Courses and Course Providers

The Division intends to adopt the proposed rulemaking action pursuant to California Labor Code (LC) section 9021.9 which mandates that the Division approve training entities to conduct task-specific training programs that include the requirements prescribed by the Cal/OSHA Standards Board for employees and supervisors involved in operations pertaining to asbestos cement (AC) pipe. This rulemaking will apply specifically to employees engaged in AC pipe work.

This rulemaking action will accomplish three things:

- ? Establish a course provider approval process, satisfying the State's Labor Code requirement,
- ? Require course providers to meet the minimum training standards as outlined in Section 1529, Title 8, California Code of Regulations (8CCR) and 29 CFR, Part 1926, as a condition of approval, and
- ? Make available the approved training required for contractors who want to engage in AC pipe work and who are not registered abatement contractors.

There are currently no State regulations that specifically address the issues of approving AC pipe training and course providers.

The proposed rulemaking is consistent with requirements the LC section 9021.9. Although 29 CFR, Part 1926 does specify training requirements, there are no federal mandates that require approval as an AC pipe training provider or that require AC pipe workers to be trained by an approved training provider; this regulation is at least as stringent at 29 CFR, Part 1926.

More Information.

The full text of the Proposed Regulations, and all information upon which the Proposed Regulations are based, including an initial statement of the reasons for the Proposed Regulations, are available upon request. Inquiries concerning the Proposed Regulations, including questions regarding the substance of the Proposed Regulations, may be directed to:

Rick Axe or Steve Smith
Department of Industrial Relations
Division of Occupational Safety and Health
2211 Park Towne Circle Suite 1
Sacramento, CA 95825
(916) 574-2993

The Division's rulemaking file on the Proposed Regulations is open for public inspection Monday through Friday, from 8:00 a.m. to 5:00 p.m., at 2211 Park Towne Circle Suite 1, Sacramento, California. Interested parties may obtain copies of the initial statement of reasons, the actual text of the Proposed Regulations, this notice, and the final statement of reasons, (once it has been prepared pursuant to Government Code section 11346.9(a),) from the Division representatives named above, or from the Division's web site (www.dir.ca.gov/DOSH).

Cost or Savings of the Proposed Regulations.

Costs or Savings to State Agencies: The Division anticipates no significant cost impact. To offset program cost, the proposed standard incorporates a fee-for-service schedule.

Impact on Housing Costs: The Proposed Regulations will not significantly affect housing costs.

Impact on Businesses: The Division has made an initial determination that the Proposed Regulations will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The proposal does not establish training which is not already required under 8 CCR 1529; only Division approval of training course providers is newly introduced. Some incremental costs are associated with the proposed fee-for-service schedule. Also, it may be true that access to business, which now requires employer registration, would more than offset any new costs. Training providers, including employers who elect to do their own training, would be required to pay a one-time fee for course approval. These fees are established to cover the Division's cost for approval of training.

Cost Impacts on Representative Private Persons or Businesses: The Division is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the Proposed Regulations.

Costs or Savings in Federal Funding to the State: The Proposed Regulations will not result in costs or savings in federal funding to the State.

Costs or Savings to Local Agencies or School Districts: No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate".

Other Nondiscretionary Costs or Savings Imposed on Local Agencies: The Proposed Regulations do not impose nondiscretionary costs or savings on local agencies.

Determination of Mandate

The Proposed Regulations do not impose a mandate on local agencies or school districts. The Division has determined that the Proposed Regulations do not impose a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the Proposed Regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal. 3d 46).

The Proposed Regulations do not require any local agency to carry out the governmental function of providing services to the public.

Effect on Small Businesses

No adverse impact on small businesses is anticipated from the implementation of the proposed regulations because this regulation introduces no new training requirements only that certain training be approved. The small cost associated with approval may be offset by relief from registration requirements.

Assessment

The adoption of the Proposed Regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

Consideration of Alternatives

The Division must determine that no reasonable alternative considered by the Division, or that has been identified or brought to the attention of the Division, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.